

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File Nos. 98100345
	)	99010278
	)	
Long Nine, Inc.	)	NAL/Acct. No. 918ed0035
Licensee, WQLZ(FM),	)	
Taylorville, IL	)	
Facility ID # 38346	)	
	)	
For a Forfeiture	)	

**FORFEITURE ORDER**

**Adopted: February 25, 2000**

**Released: February 28, 2000**

By the Chief, Enforcement Bureau:

**I. Introduction**

1. In this Order, we rescind a forfeiture of \$4,000 previously issued against Long Nine, Inc., licensee of Station WQLZ(FM), Taylorville, Illinois, for willful and repeated violations of Section 73.1206 of the Commission's rules, which requires a broadcast licensee, before recording or broadcasting a telephone conversation, to inform any party to the conversation of its intent to broadcast such conversation ("telephone conversation broadcast rule").<sup>1</sup>

**II. Background**

2. By Notice of Apparent Liability ("NAL"), DA 99-1937, released September 22, 1999, the Chief, Mass Media Bureau, determined that Long Nine, Inc., during its "Morning Disaster" show, broadcast a live conversation between a station caller, Ms. Selby, and her step-daughter, Ms. Armstrong, without first informing Ms. Selby, and rebroadcast the conversation a total of three times on October 22, 1997, and October 23, 1997. After considering the circumstances in light of the Forfeiture Policy Statement,<sup>2</sup> which provides a base forfeiture of \$4,000 for a violation of

<sup>1</sup> 47 C.F.R. Section 73.1206.

<sup>2</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, FCC 99-407, released December 28, 1999.

Section 73.1206 of the Commission's rules, the Chief, Mass Media Bureau, proposed a forfeiture of \$4,000. Long Nine, Inc. has submitted a response which requests cancellation or reduction of the forfeiture. We grant the request for rescission for the reasons that follow.

3. Long Nine, Inc. first contends that it had "no malicious intent" to violate the telephone conversation broadcast rule because the station employee involved in the disputed telephone conversation, Mr. Lytle, mistakenly believed that he had obtained the necessary consent from all who participated in a multi-party station telephone conversation. The licensee claims that prior to the broadcast, Mr. Lytle had discussed the matter with Ms. Armstrong, and she agreed to inform Ms. Selby of the specific nature of the later station telephone call. When Mr. Lytle spoke with Ms. Armstrong at the time the call was placed, however, he mistakenly interpreted her advice that "everything's cool" to mean that both she and Ms. Selby had agreed to participate in the telephone conversation at issue. Relying on this assurance, he did not think it was necessary to separately inform Ms. Selby of his intent to record or broadcast the conversation. The licensee alleges that its lack of wrongful intent is demonstrated by the prompt action it took in honoring Ms. Selby's subsequent request that the station refrain from further broadcasting the recorded telephone conversation. The licensee argues that, at worst, the violation occurred because of its employee's "good faith" mistake, and that a fine is inappropriate. Citing Liability of KGB, Inc.<sup>3</sup> and Liability of WVGO License Limited Partnership,<sup>4</sup> Long Nine, Inc. further argues that cancellation or reduction of the fine is justified because it has maintained an unblemished enforcement record, that subsequent corrective actions were taken, and, finally, that its violation was "minor" in nature.

### III. Discussion

4. We have reexamined the forfeiture imposed in view of the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act pertaining to the nature, circumstances, extent and gravity of the apparent violations.<sup>5</sup> See Forfeiture Policy Statement. In light of the facts presented in this case, we find that the licensee made a "good faith" effort to comply with the rule. Accordingly, rescission of the forfeiture is appropriate.

### IV. Ordering Clauses

5. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act, as amended, and Section 0.111, 0.311 and 1.80(f)(4) of the Commission's

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<sup>3</sup> 13 FCC Rcd 16396 (1998).

<sup>4</sup> 12 FCC Rcd 5918 (MMB 1997).

<sup>5</sup> 47 U.S.C. Section 503(b)(2)(D).

rules,<sup>6</sup> the prior forfeiture of \$4,000 issued against Long Nine, Inc. for violating Section 73.1206 of the Commission's rules IS RESCINDED.

6. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by Certified Mail -- Return Receipt Requested, to counsel for the licensee, David D. Oxenford, Esq., Fisher Wayland Cooper Leader & Zaragoza, L.L.P., Suite 400, 2001 Pennsylvania Avenue, N.W., Washington, D.C. 20006-1851.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>6</sup> 47 C.F.R. Sections 0.111, 0.311, 1.80(f)(4).